

Submitted But Not Entered.



Timothy W. Dore
U.S. Bankruptcy Judge

Settled. See Docket No. 82.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE:

HEIDI A. STAFFORD AND TYSON J.
STAFFORD,

Debtors.

Case No. 13-19709

(Chapter: 7)

Adv. Pro. 14-01458

HEIDI A. STAFFORD AND TYSON J.
STAFFORD,

Plaintiffs,

JOINT PRETRIAL ORDER

v.

NAVIENT SOLUTIONS, INC, PNC BANK,
N.A. AND NATIONAL COLLEGIATE
TRUST

Defendants.

COMES NOW Plaintiffs Heidi A. Stafford and Tyson J. Stafford (:Plaintiffs”), by and through their attorney of record, Christina L Henry of Henry, DeGraaff & McCormick, PS., and Defendant Navient Solutions, Inc. (“Defendant”), by and through their attorney of record, Mark Giske of Giske Law Firm, PLLC hereby submits the following Joint Pretrial Order as directed by the court herein pursuant to the Notice of Trial and order Setting Deadlines entered on the docket

JOINT PRETRIAL ORDER - 1

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on September 4, 2015, Local Bankruptcy Rule 7016.1(b) and Federal Local CR 16 the following is provided:

(1) Jurisdiction

Jurisdiction is vested in this Court under 28 USC § 1334 and 28 USC § 157(b)(2)(I) because this is a core proceeding to determine the dischargeability of a student loan debt.

(2) Claims and Defenses

Plaintiffs will pursue at trial the following claims: that Plaintiff's student loan debts owed to should be discharged due to undue hardship pursuant to 11 USC § 523(a)(8).

The defendant will assert that the educational debts incurred by Plaintiffs are not an undue hardship under 11 USC § 523(a)(8) and are therefore not dischargeable.

The sole issue before the Court is whether Plaintiffs meet the undue hardship exception under 11 USC § 523(a)(8) and if so, whether the court should use its equitable authority under section 105(a) to impose partial payments as the court determines pursuant to *In re Saxman*, 325 F.3d 1168 (9th Cir 2003).

Plaintiffs will pursue at trial that they meet the burden of proof for finding an undue hardship pursuant to 11 U.S.C. § 523(a)(8), and subsequently the student loan debt incurred by both Heidi Stafford and Tyson Stafford should be discharged in full or in part if the court exercises its equitable authority under section 105(a) to impose partial payments as the court determines pursuant to *In re Saxman*, 325 F. 3d 1168 (9th Cir. 2003). The defendant will assert that the student loan debt it holds (the "Loans") should not be discharged because Heidi Stafford and Tyson Stafford cannot sustain their burden of proof for finding an undue hardship.

(3) Admitted Facts

The following are admitted by the parties to which there are no dispute:

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Navient is the current holder/servicer with SLM Education Credit Finance Corporation (SLM ECFC) as the loan owner of eleven student loans with outstanding balances of over \$546,429.43 as of July 30, 2015.

A. Student Loan Debts

a. Navient Loans

No.	Loan# (last four digits)	Outstanding Loan Balance	Identifier	Proof of Claim #	Interest Rate	Currently Status
1	1562	\$102,083.84	Heidi Loan# 02	#8	13.12%	Charged Off
2	1570	\$67,306.28	Heidi Loan# 06	#9	8.75%	Charged Off
3	1588	\$51,718.78	Heidi Loan #09	#10	8.75%	Charged Off
4	1596	\$38,030.52	Heidi Loan #12	#11	7.25%	Charged Off
5	1604	\$20,782.82	Heidi Loan #15		10.00%	Charged Off
6	5001	\$51,382.80	Tyson Loan #10	#13	8.75%	Charged Off
7	5019	\$38,321.57	Tyson Loan # 13	#15	7.25%	Charged Off
8	5027	\$18,978.09	Tyson Loan # 16		10.00%	Charged Off
9	9818	\$6,208.45	Heidi Loan #1		5.50%	Charged Off
10	4988	\$85,302.88	Tyson Loan # 01	#14	13.12%	Charged Off
11	4996	\$66,313.40	Tyson Loan # 07	#12	8.75%	Charged Off
	<u>TOTAL</u>	<u>\$546,429.43</u>				

Payments: Plaintiffs have made voluntary payments on all loans now held by Navient.

Payment records provided by Navient regarding the payments made on the loans as follows:

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<u>No.</u>	<u>Discovery No.</u>	<u>POC#</u>	<u>Loan# (last four digit)</u>	<u>Outstanding Loan Balance</u>	<u>Total amount paid on loans</u>	<u>Forbearance Requests</u>
1	Heidi Loan# 02	#8	1562	\$102,083.84	\$680.39	7 forbearances requested
2	Heidi Loan# 06	#9	1570	\$67,306.28	\$304.61	7 forbearances requested
3	Heidi Loan #09	#10	1588	\$51,718.78	\$204.17	7 forbearances requested
4	Heidi Loan #12	#11	1596	\$38,030.52	\$150.83	7 forbearances requested
5	Heidi Loan #15		1604	\$20,782.82	\$189.98	7 forbearances requested
6	Tyson Loan #10	#13	5001	\$51,382.80	\$62.66	6 forbearances requested
7	Tyson Loan # 13	#15	5019	\$38,321.57	\$15.63	6 forbearances requested
8	Tyson Loan # 16		5027	\$18,978.09	\$1,759.04	6 forbearances requested
9	Heidi Loan #1		9818	\$6,208.45	\$2,987.71	5 forbearances requested
10	Tyson Loan # 01	#14	4988	\$85,302.88	\$116.86	6 forbearances requested
11	Tyson Loan # 07	#12	4996	\$66,313.40	\$80.83	6 forbearances requested
				<u>TOTAL PAID</u>	<u>\$6,546.07</u>	

Since prior to the filing of this bankruptcy proceeding, Navient had charged off all of the loans above. The Plaintiffs are not eligible for any forbearances and deferments presently. Payments are listed above solely for the court's discretion since no current payment plan exists under any contractual terms at this time. Future repayment terms are solely at the discretion of the parties.

b. Federal Stafford Consolidation Loans

The Plaintiffs both have federal student loans that are owned by the Department of Education's William D. Ford Direct Loan Program and are serviced by Fed Loan Servicing and

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Nelnet. Tyson and Heidi Stafford have both entered into Income Based Repayment programs for their respective loans that are not part of this lawsuit. Both plaintiffs have recently updated their income criteria as required by the Income Based Repayment program, setting a new 12 month payment plan for their respective loans which are as follows:

<u>Borrower</u>	<u>Owner Name/ Sched Type</u>	<u>Total Repay Amount</u>	<u>Repay Term</u>	<u>Interest Rate</u>	<u>Install Amount</u>	<u>Dues Due Date</u>
Tyson Stafford	US Dept of Ed / IBR-PFH	\$39,304.56	12 months 138 months	6%	\$75.85 \$278.22	10/21/2015 10/21/2016
Tyson Stafford	US Dept of Ed / IBR-PFH	\$71,352.84	12 months 154 months	6%	\$116.40 \$454.26	10/21/2015 10/21/2016
Heidi Stafford	US Dept of Ed / IBR-PFH	\$27,804.90		6.25%	\$183.38	
Heidi Stafford	US Dept of Ed / IBR-PFH	\$46,393.75		6.25%		
	<u>TOTAL</u>	<u>\$184,856.05</u>		<u>NEXT 12 MONTHS PAYMENT</u>	<u>\$375.63</u>	

c. National Collegiate Student Loan Trust and PNC Bank

The Plaintiffs entered into a settlement with National Collegiate Trust ("NCT") on September 2, 2015 (Docket# 64) to repay \$15,000.00, which will be paid in monthly installments of \$62.50 a month for 240 months at 0% interest. (Docket# 56). The remaining defendant, PNC Bank, NA, agreed to judgment for a full discharge of its student loan debt on July 16, 2015 (Docket# 34).

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JOINT PRETRIAL ORDER - 5

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B. Family Information

Size: Heidi Stafford is 35 years of age, Tyson Stafford is 35 years of age and their son is 6 years old and dependent on them for support. They rent a single family house at 2822 E Harrison St., Seattle, WA 98112.

C. Past Gross Income:

2014: \$60,185.00 (including \$8,306.00 in losses from Heidi Stafford's photography business);

2013: \$51,869.00 (including \$4,767.00 in losses from Heidi Stafford's photography business and Tyson Stafford's profits of \$1,934.00 from his freelance photography activities);

D. Present Employment Income:

Heidi Stafford is a casino dealer at the Red Dragon Casino which is located at 21917 highway 99, Mountlake Terrace, WA 98043. Tyson Stafford works as a bartender at the Expats Club, Inc which is located at 1510 11th Ave, Seattle, WA 98122. Their combined monthly gross income is \$5,513.67 a month with deductions of \$901.50 for taxes and L&I of \$9.95 a month.

E. Healthcare Expense

Heidi and Tyson Stafford purchase healthcare from the Washington State healthcare exchange.

F. Higher Education

a. Heidi Stafford

Spokane Community College- Spokane, WA – 1996-1998

Did not graduate. Her major was Law Enforcement.

Spokane Falls Community College – Spokane, WA – 1999-2000

Did not graduate. Her major was Childhood Education.

Glendow – Spokane, WA – 2000

Did not graduate. Her major was cosmetology.

Seattle Central Community College – Seattle, WA – 2002-2005

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Graduated with an A.A. in Liberal Arts with a concentration in the theater arts.
This Degree and credits obtained are transferable and accredited.

Brooks Institute of Photography – Santa Barbara, CA- 2005-2008

Graduated with a BA in Portrait Photography.

Shoreline Community College – Shoreline, WA- 2009

Did not graduate. Her major was Business.

b. Tyson Stafford

Whitworth College – Spokane, WA – 1998-2000

Did not graduate. His major was Psychology with a minor in Sociology.

Brooks Institute of Photography – Santa Barbara, CA – 2005-2008

Graduated with a BA in Commercial Photography.

G. Bankruptcy Filing:

The Plaintiffs filed a Chapter 11 bankruptcy on October 31, 2013 and later converted their case to a Chapter 7 on July 10, 2014. The discharge was granted on January 2, 2015 and this adversary proceeding was filed on December 8, 2014.

H. Prior Scheduled Debt

The Plaintiffs listed \$788,874.76 in unsecured debt with \$739,491.28 of that amount listed as student loan debt. They also claimed \$10,330.95 as secured debt owed to BMW Bank of North America for a car loan on a 2009 mini cooper.

I. Assets

Schedule B lists assets with a value of \$45,443.00, which includes their 2009 mini cooper with a value of \$17,000.00 at the time of filing, photography and studio equipment of \$7,265.00, a security deposit of \$2,700.00 for their rental apartment and \$3,332.00 in attorney fees held in trust by Henry, DeGraaff & McCormick, PS for litigation of this adversary proceeding.

J. Expenses

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Line	Description	ACTUAL EXPENSES
19A	Food (includes meals at home or away)	\$525.00
19A	Housekeeping supplies (includes laundry and cleaning supplies; other household products such as cleaning and toilet tissue, paper towels and napkins; lawn and garden supplies; postage and stationary; and other miscellaneous household supplies)	\$48.00
19A	Apparel & services (includes shoes and clothing, laundry and dry cleaning, and shoe repair)	\$117.00
19A	Personal care products & services (includes hair care products, haircuts and beautician services, oral hygiene products and articles, shaving needs, cosmetics, perfume, bath preparations, deodorants, feminine hygiene products, electric personal care appliances, personal care services, and repair of personal care appliances)	\$50.00
19A	Miscellaneous	\$235.00
20A	Rent (includes renter's insurance)	\$1,832.00
20B	Non-Mortgage Expense (gas, electricity, water, heating oil, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, basic telephone and cell phone)	\$424.00
22A	Transportation Expense / vehicle operation (registrations, licenses, inspections, parking and tolls)	\$154.00
23 & 24	Ownership cost for Car (operating costs include maintenance, repairs, insurance, fuel,)	\$524.00
27	Life Insurance	\$11.00
31	Other Necessary Expenses: health care (unreimbursed deductibles medications therapy co-pays)	\$113.00

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Line	Description	ACTUAL EXPENSES
32	Other Necessary Expenses: telecommunication services (Does not include basic phone or cell service. Pagers, call waiting, long distance, caller ID, and internet may be included, depending on amount and circumstance; test is whether "necessary for health and welfare or production of income.")	\$40.00
56	Federal Student Loan Payments under IBR for Heidi Stafford	\$183.38
56	Federal Student Loan Payments under IBR for Tyson Stafford	\$192.25
56	NCT Student Loan Payment	\$62.50
	TOTAL EXPENSES	\$4,511.13

(4) Additional Agreed Facts

Plaintiffs are currently pregnant and expecting a new baby due in June 2016.

(5) Factual Contentions

Plaintiff's Contentions

A. Plaintiffs cannot maintain a minimal standard of living based on Plaintiffs' current income and expenses, while simultaneously repaying the loans they owe to the defendant.

B. Additional circumstances exist indicating that this state of financial affairs will persist over a significant portion of the repayment periods of the loans held by the defendant. The Plaintiffs here can rebut the presumption that their income will increase to a point where they can make payments and maintain a minimal standard of living.

C. A good faith effort has been made to repay the loans held by the defendant.

1 D. The Plaintiffs' educational background makes it unlikely that they will be able to
2 obtain employment that would enable them to significantly increase their income in the
3 foreseeable future.

4 Defendant's Contentions

5 A. Defendant Navient dispute that the Plaintiffs can meet the requirements of the
6 applicable test required for a determination of dischargeability under 11 USC §523(a)(8).

7 **(6) Issues of Law**

8 The two legal issues of law are as follows:

9
10 A. Whether the Plaintiffs' educational loan debts are dischargeable due to undue
11 hardship under 11 U.S.C. § 523(a)(8),

12 B. Whether the Plaintiffs have proved an undue hardship by a preponderance of the
13 evidence, and if so, then

14 C. Whether the Court should use its equitable authority under Section 105(a) to
15 impose nay partial payments.¹

16
17 **(7) Expert Witnesses**

18 Neither party intends to present any expert testimony.

19 **(8) Other Witnesses**

20 The names and addresses of witnesses, other than experts, to be used by each party at the
21 time of trial and the general nature of the testimony are:

22 On Behalf of Plaintiffs

23
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25
26 ¹ The court ruled at the Summary Judgment hearing on September 4, 2015 that the Ninth Circuit expressly
authorizes partial discharge under *In re Saxman*, 325 F.3d 1168 (9th Cir 2003) and this ruling remains the law of the
case.

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1 1. Plaintiffs, Heidi A. Stafford and Tyson J. Stafford (“Plaintiffs”) may be called to
2 testify regarding facts relevant to this case, including but not limited to their efforts to maximize
3 income and minimize expenses as well as their efforts to pay their student loan lenders.

4 2. Wiley Calhoun, Shift Manager, Red Dragon Casino, 21917 Highway 99,
5 Mountlake Terrace, WA 98036, may be called to testify about Heidi Stafford work schedule at
6 the Red Dragon Casino.

7 3. Brooks Institute answered a non-party Subpoena *Duces Tecum* with a Declaration
8 from their record’s coordinator and the requested documentation. Selected Records will be
9 submitted by the declaration of Tim Kirby, the Records Coordinator for Brooks Institute.
10 Relevant records detail the Costs of Attendance, the Student Loans paid to Brooks Institute and
11 disbursed to Plaintiffs for books, living expenses and other approved expenses, and the financial
12 aid loan disbursement summaries.
13

14 4. Plaintiffs reserve the right to call and examine any witness called by defendant
15 Navient Solutions Inc. at Trial also unless certain facts are stipulated to before trial.
16

17 **(9) Exhibits**

18 A. Admissibility Stipulated.

19 Plaintiff’s Exhibits:

20

Nmbr#	Description	Obj	Admitted
P-2	Tyson’s Forbearance History (all loans)		X
P-3	Heidi’s Forbearance History (all loans)		X
P-8	Plaintiff Tyson Stafford’s FedLoan Servicing Sept 25, 2015 notice of IBR monthly payment change		X
P-9	Plaintiff Heidi Stafford’s Nelnet Sept 28, 2015 notice of IBR monthly payment change.		X
P-10	Plaintiffs’ current income and expense budget (Sept 30 2015)	X	

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P-11	Plaintiffs' Average Paycheck chart	X	
P-12	Plaintiff Tyson Stafford's paystubs at the Barca Lounge (a/k/a The Expats Club Inc.) from 5/22/2015 – 9/25/2015		X
P-13	Plaintiff Heidi Stafford's paystubs at the Red Dragon Casino (a/k/a NG Washington III, LLC) from 1/2/2015 – 9/25/2015		X
P-15	Future Plaintiff Heidi Stafford's paystubs at the Red Dragon Casino (a/k/a NG Washington III, LLC) from 10/9/2015 – 10/23/2015		X
P-16	Plaintiffs' ATT wireless billing statement for October 2015 (when available)		X
P-17	Plaintiffs' Comcast bill updated for October 2015 (when available)		X
P-18	Plaintiffs' last six months of Amazon.com charges with updates		X
P-19	Plaintiffs; Bank of America bank statements for May 2015 with available receipts for purchases on those statements		X
P-20	Plaintiffs; Bank of America bank statements for June 2015 with available receipts for purchases on those statements		X
P-21	Plaintiffs; Bank of America bank statements for July 2015 with available receipts for purchases on those statements		X
P-22	Plaintiffs; Bank of America bank statements for Aug 2015 with available receipts for purchases on those statements		X
P-23	Plaintiffs; Bank of America bank statements for Sept 2015 with available receipts for purchases on those statements		X
P-24	Plaintiffs; Bank of America bank statements for Oct 2015 with available receipts for purchases on those statements		X
P-25	Plaintiffs' 2014 tax return		X
P-26	Plaintiffs' 2013 tax return		X
P-27	Plaintiffs' 2012 tax return		X
P-28	Plaintiff Tyson Stafford's unemployment log for job applications	X	

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P-29	Plaintiff Tyson Stafford's Unemployment Compensation Report		X
P-30	Plaintiffs' Reaffirmation agreement with BMW Bank of North America		X
P-31	Plaintiffs' Rental Lease		X
P-32	Plaintiff Heidi Stafford's weekly work schedule		X
P-33	Plaintiff Tyson Stafford's weekly work schedule and clock in clock out timesheets (August – October)		X
P-34	The IRS Collection Financial Standards ("Means Test") <i>Means Testing: Census Bureau, IRS Data and Administrative Expenses Multipliers</i> , U.S. Trustee Program http://www.justice.gov/ust/means-testing/means-testing-cases-filed-or-after-may-15-2015 (updated June 10, 2015).	X	
P-35	<i>History of Brooks Institute</i> , http://www.brooks.edu/About-Brooks/History-Of-Brooks (last visited August 2, 2015)	X	
P-36	<i>Brooks Institute</i> , Wikipedia, https://en.wikipedia.org/wiki/Brooks_Institute (last visited August 2, 2015).	X	
P-37	Bureau of Labor Statistics, U.S. Department of Labor, <i>Occupational Outlook Handbook, 2004-05 Edition</i> , Photographers, http://permanent.access.gpo.gov/lps4235/2004-05/2004-2005/ocos264.htm (last modified May 18, 2004)	X	
P-38	Doug Lederman, <i>Calif. Reins In a For-Profit College</i> , InsideHigherEd, https://www.insidehighered.com/news/2005/07/20/brooks (July 20, 2005)	X	
P-39	Gretchen Morgenson, <i>The School That Skipped Ethics Class</i> , The New York Times, http://www.nytimes.com/2005/07/24/business/youmoney/the-school-that-skipped-ethicsclass.html (July 24, 2005)	X	
P-40	Amar Toor, <i>Chicago Sun-Times trains reporters to shoot with iPhones after laying off all its photographers</i> , The Verge, http://www.theverge.com/2013/6/1/4386074/chicago-sun-times-cuts-entire-photography-staff-trains-reporters-iphone (June 1, 2013)	X	

Submitted But Not Entered.

P-41	Kim Peterson, <i>Why Sports Illustrated laid off all of its photographers</i> , CBS News MoneyWatch, http://www.cbsnews.com/news/why-sports-illustratedcut-all-of-its-photographers/ (January 26, 2015).	X	
P-42	Bureau of Labor Statistics, U.S. Department of Labor, <i>Occupational Outlook Handbook, 2014-15 Edition</i> , Photographers, http://www.bls.gov/ooh/media-and-communication/photographers.htm (published January 8, 2014).	X	
P-43	Filed bankruptcy Petition and Schedules for Heidi and Tyson Stafford at time of original filing.	X	
P-44	Filed bankruptcy Petition and Schedules for Heidi and Tyson Stafford at the time of Conversion to Chapter 7	X	
P-45	Heidi and Tyson Stafford's bankruptcy discharge order		X
P-46	Filed Proofs of Claim by Sallie Mae/Navient in this bankruptcy case.		X
P-47	Documents from Brooks' Institutes Custodian of Records re Loan Records		X
P-48	Navient/Sallie Mae Excel Loan with supporting documents – disbursed to Heidi Stafford on 12/2003		X
P-49	Navient/Sallie Mae Excel Loan with supporting documents – disbursed to Tyson Stafford on 7/2008		X
P-50	Tyson Stafford's Work Schedule from 9/28/2015 – 10/18/2015	X	
P-51	Tyson Stafford's Clock In and Clock out Work hours from 9/28/2015 – 10/18/2015		X
P-52	Heidi Stafford's Work Schedule	X	
P-53	Health Care Exchange Monthly Payment Stmt		X
P-54	Settlement with National Collegiate Trust ("NCT") on September 2, 2015 (docket # 64 and #56)		X
P-55	PNC Bank, NA's agreed to judgment for a full discharge of its student loan debt on July 16, 2015 (docket# 34)		X
P-56	Planned Parenthood Pregnancy Test Results		X

Defendant's Exhibits:

Nmbr#	Description	Obj	Admitted
D-2	Ms. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of November 8, 2005		X
D-3	Ms. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of July 11, 2006		X
D-4	Ms. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of March 6, 2007		X
D-5	Ms. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of November 6, 2007		X
D-6	Ms. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of July 21, 2008		X
D-7	Navient's Account Summary Electronic Record of Ms. Stafford's account(s)		X
D-8	Declining Balance Payment History for Ms. Stafford's Navient student loans		X
D-9	Plaintiff, Tyson J. Stafford ("Mr. Stafford")'s, Application and Promissory Note for an educational loan, with initial disbursement date of October 25, 2005		X
D-10	Mr. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of July 11, 2006		X
D-11	Mr. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of March 20, 2007		X
D-12	Mr. Stafford's Application and Promissory Note for an educational loan, with initial disbursement date of November 6, 2007		X
D-14	Navient's Account Summary Electronic Record of Mr. Stafford's account(s)		X
D-15	Declining Balance Payment History for Mr. Stafford's Navient student loans		X

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D-16	Plaintiffs' supplemental responses to Navient's First Set of Request for Admission		X
D-17	Excerpts from Plaintiffs' Bank of America Bank Statements		X
D-18	Plaintiffs' Amended Schedule I		X

(10) Action by the Court

A. This case is scheduled for trial without a jury on November 9, 2015 at 9:30 AM.

B. Trial briefs shall be filed in compliance with the Order Setting Trial Date which requires on or before October 30, 2015.

C. This Pretrial Order is due by October 30, 2015

D. Exhibits shall be submitted in compliance with the court's Order Setting Trial Date.

This order shall control the subsequent course of the action unless modified by subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

// END OF ORDER //

Form approved by

HENRY, DEGRAFF & MCCORMICK, P.S.

By: /s/ Christina L Henry
Christina L Henry, WSBA# 31273
Attorney for the Plaintiffs

GISKE LAW FIRM, PLLC

By: /s/ Mark J Giske
Mark J. Giske, WSBA# 15969
Attorney for Navient Solutions, Inc.